

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DONNA L. FELL-BOURELLE,

Case No. 3:-09-cv-069

Plaintiff,

-vs-

**District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz**

**FREMONT INVESTMENT & LOAN,
et al.,**

Defendants.

**ENTRY AND ORDER ADOPTING THE MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATIONS AND SUPPLEMENTAL REPORT
AND RECOMMENDATIONS IN PART AND DISMISSING
DEFENDANTS WELLS FARGO BANK AND AMANDA HARRISON
WITHOUT PREJUDICE**

On June 26, 2009, Magistrate Judge Merz filed a Report and Recommendations recommending that this case be dismissed without prejudice as to Defendants Wells Fargo Bank, National Mortgage Funding and Amanda Harrison for lack of prosecution because service on these Defendants had not been properly completed. (Doc. #11.) Plaintiff Donna L. Fell-Bourelle has filed no objections and on July 14, 2009, filed what purports to be a Certificate of Service. (Doc. #12.) The Magistrate Judge then, on July 20, 2009, filed a Supplemental Report and Recommendations wherein he sets forth the reasons why the purported Certificate of Service is invalid. (Doc. #13.)

The District Judge has made a de novo review of the record and applicable legal authority on this matter pursuant to 28 U.S.C. § 636(b) and Fed.R.Civ.P. 72(b). Upon consideration of the foregoing, the Court finds that Wells Fargo Bank, and Amanda Harrison

have not been properly served and the time for proper service has passed. These two Defendants are, therefore, dismissed for lack of prosecution.

On August 17, 2009, National Mortgage Funding filed a Notice of Filing of Chapter 7 Bankruptcy. This, of course, operates as a automatic stay of any actions against this Defendant.

The Magistrate Judge's Report and Recommendations (doc. #11) and Supplemental Report and Recommendations (doc. #13) are adopted with the exception that no action may be taken at this time regarding National Mortgage Funding. Defendants Wells Fargo Bank and Amanda Harrison are dismissed without prejudice for lack of prosecution.

DONE and **ORDERED** in Dayton, Ohio, this Nineteenth day of August, 2009.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record